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In re Application of :
FATH, Andreas :
Application No.: 10/534,560 : DECISION ON
PCT No.: PCT/EP03/12697 :
Int. Filing Date: 13 November 2003 : PETITIONS
Priority Date: 14 November 2002 :
Attorney Docket No.: D700-00394 : UNDER 37 CFR 1.137(a) and 1.181
For: COATING METHOD :

This decision is in response to applicant's petitions to revive the application for unavoidable abandonment and to withdraw the holding of abandonment, filed on 23 January 2006.

BACKGROUND

On 13 November 2003, applicant filed international application PCT/EP03/12697, claiming a priority date of 14 November 2002. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 27 May 2004. The thirty month period for paying the basic national fee in the United States expired on 14 May 2005.

On 11 May 2005, applicant submitted a transmittal letter for entry into the national phase in the United States, accompanied by an authorization to charge deposit account no. 04-1679.

On 02 November 2005, the Office mailed Notice of Abandonment (Form PCT/DO/EO/909) indicating that the application went abandoned for failure to pay the basic national fee by thirty months.

On 23 January 2006, applicant submitted the instant petitions.

DISCUSSION

Applicant argues that deposit account no. 04-1679 had sufficient funds to cover the basic national fee on 16 May 2005, when it was charged and the application should not be abandoned. As evidence, applicants have submitted a printout from their online deposit account statement.

The online deposit account statement is not sorted by time stamp on the transaction reflecting the order in which the account was charged, but by sale sequence number. Thus, customers viewing their account balance online can believe they have sufficient balance when they do not.

A review of the transactions in time stamp order for 16 May 2005, indicates that the deposit account balance dropped below the \$300 level required for the basic national fee on the afternoon of 13 May 2005 (accounting day 16 May 2005). As such, there was not enough money present to cover the charges.

Petition Under 37 CFR 1.137(a)

A petition to revive an application for patent unavoidably abandoned under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, (2) the petition fee, (3) a satisfactory showing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition to 1.137(a) was unavoidable and (4) a terminal disclaimer if application was filed before June 8, 1995.

Items (1), (2) and (4) have been met. Applicant has now paid the basic national fee and the petition fee. A terminal disclaimer is not required as the application was filed on or after 08 June 1995. The fee for late furnishing of the search fee, examination fee or oath or declaration will be charged to deposit account no. 04-1679, as authorized.

Item (3) has not been satisfied. Failure to maintain a sufficient deposit account balance is not an unavoidable error that could not have been averted by the care that one takes with one's most important business.

Applicants may wish to consider filing a petition under 37 CFR 1.137(b) for unintentional delay.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.137(a) is **DISMISSED** without prejudice. The petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(a) and 1.181"

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


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